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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

Rohm and Haas Company,

Claimant

v.

Thompson-Hayward Chemical  
Company,

Respondent

FIFRA COMP. Docket No. 39

Memorandum and Order

This is a proceeding under Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136a(c)(1)(D) (Supp. V, 1975) ("FIFRA"), to determine the reasonable compensation to be paid to producer of test data by a registrant who has used the data in registering a pesticide. Rohm and Haas Company ("Rohm & Haas"), the claimant herein, is the producer of the data, and Thompson-Hayward Chemical Company ("Thompson-Hayward"), respondent herein, is the registrant who used the data. These proceedings have been instituted and the undersigned has been designated to preside pursuant to the authorization and direction of the Acting Administrator dated October 13, 1976 (41 F.R. 46020).

Both parties have been served with a copy of each document in the file that has been received from the Director, Registration Division, Office of Pesticide Programs, as provided in Rule 2 of the rules of procedure issued herein. In accordance with said rule, each party has filed a statement with respect to whether the file is complete and adequately states the party's position, and Rohm and Haas has also furnished other information as required by the rule.

Thompson-Hayward in its statement, which was filed prior to Rohm and Haas' statement, has said that it cannot feel its position to be adequately set forth unless and until certain information is supplied by Rohm and Haas, and the EPA specifies which of the data, if any, submitted by Rohm and Haas was used in the determination of Thompson-Hayward's registration.

Thompson-Hayward's first objection may now have been met by the statement subsequently filed by Rohm and Haas. As to requiring the EPA to furnish a more specific identification of data, a similar request was considered by me in the case of American Cyanamid Company v. Thompson-Hayward Chemical Company, FIFRA COMP. Docket No. 25. See my opinion and order of March 10, 1977, a copy of which is submitted with this decision. Like that case, a reasonable reading of the correspondence in the file indicates that Thompson-Hayward relied upon and was requesting the EPA to consider all the test data cited by Rohm and Haas in its claim for compensation. Thompson-Hayward, however, apparently feels that the EPA may have considered less than all the

data. It is not clear from the file as now constituted why the EPA should have done so, and my observations in FIFRA COMP. Docket No. 25, Opinion at 13-14, on the obligation of a respondent vis-a-vis the EPA in identifying data for Section 3c(1)(D) purposes in registering a pesticide seem equally appropriate here.

Nevertheless, the EPA should know whether it considered all the data or something less than all the data in registering the Thompson-Hayward product. Because it may simplify the issues in this proceeding and possibly expedite them, I am, accordingly, pursuant to my authority under Section 2(g) of the rules, directing the Director of Registration to file a statement identifying which data cited in Rohm and Haas' letter of July 7, 1975, as supplemented by Exhibit B to its statement filed in this proceeding, was considered by the EPA in registering PROPANIL TECHNICAL (EPA Reg. No. 148-1219). That statement is to be submitted by April 25, 1977, unless the time is extended as provided in the rules. Further proceedings in this matter will be stayed until it is received.

Order

Pursuant to Section 2(g) of the Rules of Procedure issued herein, the Director, Registration Division, Office of Pesticide Programs, United States Environmental Protection Agency, or his duly authorized

designee ("Agency") is ordered to submit a statement stating which test data for which claimant Rohm and Haas Company has claimed compensation under letter of July 7, 1975, (as supplemented by the attached Exhibit B from its statement filed herein) was considered by the Agency in registering PROPANIL TECHNICAL, EPA Reg. No. 148-1219. Said statement shall be submitted by April 25, 1977, unless the time is extended by a timely motion as provided in Section 4 of the Rules of Procedure, and copies shall be served on the parties. All further proceedings in this matter are stayed until the statement has been filed by the Agency as ordered herein.

*Gerald Harwood*

Gerald Harwood  
Administrative Law Judge

March 21, 1977



### Propanil Data

Rohm and Haas Company on July 7, 1975 filed with EPA and Thompson-Hayward Chemical Company, Kansas City, Kansas, a notice of claim for compensation relating to Thompson-Hayward's registration request for their product, "Propanil Technical." Data cited as compensable were mostly general references rather than specific. Below are the specific data on which our claim is based.

#### I-Efficacy Data

Extensive small-scale and large-scale field studies to determine the proper usage of propanil as a rice herbicide were conducted by Rohm and Haas Company. Many of these involved experiment station grant by Rohm and Haas and a heavy involvement by Rohm and Haas Research and Development personnel. No attempt has been made to detail all these efficacy reports nor to determine specifically which are of greatest value. The overall cost to Rohm and Haas Company of the program to prove propanil to be an effective rice herbicide is shown in Appendix A.

#### II-Residue and Fate in Environment

The following critical reports are claimed as compensable in supporting other registrations for propanil. All such were filed with EPA in pesticide petition 0F0932,



Section D, cited in our claim.

1. Determination of Micro Quantities of Stam in Plant Tissues. Rohm and Haas Company Research Division.
2. Determination of Stam and 3,4-dichloroaniline in Water. Rohm and Haas Research Division.
3. Decline and Residue Study of Stam on Rice Plants. Rohm and Haas Company Research Division.

Part I - Micro chemical analysis

Part II - Residue determinations with use of  $C_{14}$  labelled Stam

Part III - Discussion of the two experiments.

Report on isolation and identification of plant-bound compound

Part IV - Analysis of rice kernel and straw

4. Studies on Metabolism of 3,4-dichloropropionanilide in Rice. Rohm and Haas Company Research Division.
5. Studies on Metabolism of 3,4-dichloropropionanilide in Rats. Rohm and Haas Company Research Division.
6. Stam Residues on Rough Rice. Rohm and Haas Research Division.
7. Summary and Detailed Reports on Residues in Rough Rice from Studies in California and the Southern Rice Growing States, Including  $C_{14}$  Tracer Study of Residue in Rice as a Function of Dosage, Time of Application and Variety of Rice. Rohm and Haas Research Division.



8. Summary and Detailed Reports on Residues in Rice Milled Fractions from Studies Conducted with Samples Obtained from California and the Southern Rice Growing States. Rohm and Haas Company Research Division.
9. Summary and Detailed Reports on Residues in Rice Flood Water in California and the Southern Rice Growing States. Rohm and Haas Research Division.
10. Summary and Detailed Reports on Residues in Soil. Rohm and Haas Research Division.
11. Summary and Detailed Reports on Residue on Crayfish. Rohm and Haas Research Division.
12. Reports on Studies Conducted to Determine Residues of Stam in Meat of Dairy Cattle and Chickens, Milk and Eggs. Rohm and Haas Research Division.

### III-Toxicity Studies

Acute toxicity studies are not claimed as compensable since each registrant must submit such on each specific formulation of the pesticide. The following toxicological studies are compensable. They were filed with EPA in pesticide petition 0F0932, Section C, cited in our claim.

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1. Toxicologic study on the Effect of Adding Stam to the Diet of Rats for Three Months. Medical College of Virginia, expressly for and paid by Rohm and Haas.
2. Toxicological Study on the Effect of Adding Stam F-34 to the Diet of Rats for a Period of Two Years. Medical College of Virginia, expressly for and paid by Rohm and Haas Company.
3. Toxicological Study on the Effect of Adding Stam to the Diet of Beagle Dogs for a Period of Two Years. Medical College of Virginia, expressly for and paid by Rohm and Haas Company.
4. Toxicological Study of Dietary Stam on Reproduction of Albino Rats. Medical College of Virginia, expressly for and paid by Rohm and Haas Company.
5. Toxicity of Stam to Birds (Mallard Duck, Japanese Quail, and Wild Birds). Huntingdon Research Centre, England, expressly for and paid by Rohm and Haas Company.
6. Toxicity of Stam to Fish and Daphnia. Huntingdon Research Centre, England, expressly for and paid by Rohm and Haas Company.



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Filed subsequent to petition 0F0932 were the following data cited in our claim and included here to complete the reference data:

1. Toxicity Studies - Shrimp, Crab and Oysters.  
Bionomics, Inc., expressly for and paid by Rohm and Haas Company.
2. Residue Studies (Accumulation, Distribution, and Elimination of Residues and Determination of Residue Levels) of Stam in Catfish and Crayfish. Rohm and Haas Company Research Division.